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Single Bench

Before Hon'ble High Court of Chhattisgarh at Bilaspur

Cr. Appeal No. 54 /06

337/06

APELLANT : **Ghansu Alias Ghanshyam** S/o Ganesh,
IN JAIL
Aged about - 25years, Working as- Labour,
R/o - Bairagi Mohalla, Powar House,
P.S. Chawri, District - Durg (C.G.)

Filed on 17/1/06
by Shri Secunderabad Versus
Advocate
R

VERSUS

RESPONDENTS : **State of C.G.**

Criminal Appeal under 374 (2) of the code of Criminal Procedure - 1973

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A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.54/2006

Ghansu Alias Ghanshyam

Vs.

State of Chhattisgarh

Post for Orders : 31.07.2006

Sd/-
DILIP RAOSAHEB DESHMUKH
Judge

26 A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

Criminal Appeal No.54/2006

Ghansu Alias Ghanshyam

Vs.

State of Chhattisgarh

Shri Suryakant Mishra, learned Counsel for the appellant.
Shri M.P.S.Bhatia, Panel Lawyer for the State.

J U D G M E N T

(Delivered on this 31st day of July 2006)

This appeal is directed against the judgment dated 30th November, 2005 delivered by Shri A.R.Dhruv, Special Judge (NDPS Act) Durg in Special Case No.7/2005 whereby the appellant was convicted under Section 20 (b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act) and sentenced to rigorous imprisonment for three years and a fine of Rs.10,000/- and in default to undergo additional rigorous imprisonment for six months.

2. Briefly stated the prosecution story is that on 8.2.2005 Sub-Inspector Shri B.L. Ramteke P.W.7 of Police Station Chhawni while on town patrolling received secret information that the appellant was bringing contraband *ganja* in a packet. After recording the information so received and informing his superiors, he apprehended the appellant near Bus-stand. The appellant was carrying a bag in his hand. After serving notice under Section 50 of the Act and obtaining

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consent of the appellant, the bag was searched. Upon finding contraband *ganja* like substance inside the bag, the contents of the bag were weighed and found to be 5 kilograms and 750 grams. Three samples of 50 grams each were taken from the contents of the bag and were sealed. Remaining *ganja* in the packet was also sealed. The appellant was taken to Police Station Chhawni. The seized contraband *ganja* and the sample packets were handed over to Head Constable Khemlal for safe custody. An entry was made in the *Malkhana* register Ex.P.7A. On 14.2.2005 with memo Ex.P.21 of the I.G.P. and Senior Superintendent of Police, Durg, two sample packets were delivered at the F.S.L., Raipur by Constable Narottam Singh P.W.8. Vide report Ex.P.23, it was opined that both the sample packets contained *ganja*. After completion of investigation, the appellant was prosecuted under Section 8 (c) read with Section 20 (b) (ii) (B) of the Act.

3. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 8 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellant as aforesaid in para - 1.

4. Shri S.K.Mishra, learned counsel for the appellant contended that the conviction of the appellant under Section 20 (b) (ii) (B) of the Act and the sentence awarded thereunder were liable to be set aside due to the total non-compliance of Sections 55 and 57 of the Act. It was also urged that a specimen impression of the seal was not prepared at the time of sealing the sample packets and the remaining contraband *ganja* due to which there is nothing on record to show the

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description of the seal used at the time of sealing of the sample packets. It was also pointed out that vide memo Ex.P.21 the sample packets were handed over to Constable Rohit Kumar No.369 on 11.2.2005. Acknowledgment of F.S.L. Ex.P.22 shows that the sample packets were delivered on 14.2.2005 by one Constable Narottam Singh No.864. This clearly revealed that the sample packets moved through different hands before reaching the F.S.L. and the possibility that the sample analysed by the F.S.L. had been tampered with could not be ruled out. It was also urged that independent witnesses Harendra Yadav P.W.5 and Panchuram P.W.6 did not support the prosecution story and there were material interpolation in the weighment *Panchnama* Ex.P.14 and sample *Panchnama* Ex.P.3 which created a serious dent in the prosecution story. On the other hand, Shri M.P.S.Bhatia, learned Panel Lawyer argued in support of impugned judgment.

5. Having considered the rival submissions, I have perused the record. In an offence under Section 20 (b) (ii) (B) of the Act the prosecution is required to prove beyond doubt that the sample packets analysed by the F.S.L. were the same which had been prepared and sealed at the time of seizure. The prosecution has to establish that a specimen impression of the seal was prepared at the time of sealing the samples so as to facilitate comparison from the description of seal given in the report of the F.S.L. and to ensure that the seals found on the sample packets by the F.S.L. tallied with the seals put on the sample packets at the time of sealing them. Section 55 of the Act also provides that before entrusting the sample packets at the *Malkhana*, the Station House Officer shall put his seal on the sample packets. This ensures that the sample packets are not

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tampered with. It is also the duty of the prosecution to account for the possession of the sample packets after they are taken out from the *Malkhana* and till they reach the F.S.L.

6. Constable Ashok Kumar P.W.3 who was present during the alleged search and seizure did not testify that the contraband *ganja* was sealed or any samples taken therefrom were sealed. It renders the very vague testimony of B.L. Ramteke P.W.7 in paras 5 and 6 doubtful. Harendra P.W.5 also stated that in his presence no search was conducted and he was asked by the police to accompany them to P.S. Chhawni where all papers were prepared and got signed from him. Panchuram P.W.6 also turned hostile and did not support the prosecution case. D. Pradhan P.W.2 who did the weighment of the contraband *ganja* also did not support the prosecution story. B.L.Ramteke P.W.7 also did not specifically state in paras 6 and 7 that 3 samples of 50 grams each were separated from the *ganja* found in possession of the appellant and were sealed. He also did not give any description of the seal used by him to seal the sample packets and gave no explanation for not affixing the specimen impression of the seal on the seal *Panchnama* Ex.P.15.

7. The evidence led by the prosecution does not show in any manner that a specimen impression of the seal was prepared by A.S.I. Shri B.L.Ramteke P.W.7 while sealing the samples, alleged to have been taken after effecting the seizure of the contraband *ganja*. Although a seal *Panchnama* was prepared vide Ex.P.15, yet a specimen impression of the seal was not affixed on it. The seizure memo Ex.P.16 also does not contain a specimen impression of the seal. The memo Ex.P.21 of the Senior Superintendent of Police, Durg, clearly

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shows that on 11.2.2005 Constable Rohit Kumar No.369 was authorized to take the sample packets to the F.S.L. Raipur. However, the acknowledgment Ex.P.22 of the F.S.L. clearly shows that the sample packets were received from Constable Narottam Singh No.864 on 14.2.2005. Constable Rohit Kumar was not examined by the prosecution. Constable Narottam Singh P.W.8 did not give any explanation as to who entrusted the sample packets to him on 14.2.2005 for being taken to the F.S.L. Thus, it appears that after being taken out from the *Malkhana* on 11.2.2005, the sample packets passed in different hands. The specimen impression of the seal drawn by the F.S.L. shows that the sample packets received in the F.S.L. bore the impression "K.R.B.S.C. O.T.C./M.P.P. The seal *Panchnama* Ex.P.5 also does not give any description of the seal used for sealing the sample packets. The words "K.R.B.S.C. O.T.C./M.P.P" do not have any resemblance with P.S. Chhawni or A.S.I. B.L.Ramteke P.W.7.

8. Shri B.L.Ramteke P.W.7 did not depose that before entrusting the sample packets at the *Malkhana* on 8.2.2005 the S.H.O. of P.S. Chhawni had affixed his seal on the sample packets. Thus, there has been total non-compliance of Section 55. The record of the trial Court also shows that the remaining sample packet and contraband *ganja* were not produced before the trial Court. Thus, the possibility that the sample sent to the F.S.L. could have been tampered with could not be ruled out.

9. In *Valsala v. State of Kerala* **1994 (1) M.P.W.N. 137 (SC)** where the contraband *ganja* was produced in Court after the long delay of three months and there was no evidence to show with whom the samples were lying and whether it was sealed, the appellant was

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acquitted. The Apex Court observed that "..... No doubt the trafficking in narcotic drugs is a menace to the society but in the absence of satisfactory proof, the Courts cannot convict". In the present case also the seized contraband *ganja* and the remaining sample packets were not produced before the trial Court so as to facilitate comparison of the seals on it with the report of the F.S.L. No explanation was forthcoming regarding the possession of the sample after it was taken out from the *Malkhana.* Constable Rohit Kumar who was authorised by the Senior Superintendent of Police for delivering the sample packets was not examined by the prosecution. It was not explained as to how the sample packets were delivered to Constable Narottam Singh and possession of the sample packets from 11.2.2005 to 14.2.2005 was also not accounted for. There is not even an iota of material on record to show the description of seal which was used to seal the sample packets. There is total non-compliance of Section 55 of the Act also.

10. Having thus considered the evidence led by the prosecution in its entirely, I am of the considered opinion that in view of the facts mentioned above, conviction of the appellant under Section 20(b)(ii)(B) of the Act and the sentence awarded thereunder are liable to be set aside.

11. In the result this appeal is allowed. Conviction of the appellant under Section 20 (b) (ii) (B) of the Act and the sentence awarded thereunder are set aside. The appellant is acquitted and shall be set at liberty forthwith if not required in any other case. Fine, if paid, shall be refunded.

Sd/-
DILIP RAOSAHEB DESHMUKH
Judge